DOCUMENT RESUME

ED 304 969 HE 022 272

AUTHOR Douglas, Joel M., Ed.
TITLE "Yeshivawatch"--Year Nine.
INSTITUTION City Univ. of New York, N.Y. Bernard Baruch Coll. National Center for the Study of Collective Bargaining in Higher Education and the Professions.
PUB DATE Nov 88
NOTE 10p.
AVAILABLE FROM National Center for the Study of Collective Bargaining in Higher Education and the Professions, Baruch College, 17 Lexington Ave., Box 322, New York, NY 10010 ($25.00 annual subscription, $5.00 single copy, free to Center members).
PUB TYPE Collected Works - Serials (022) -- Viewpoints (120)
JOURNAL CIT National Center for the Study of Collective Bargaining in Higher Education and the Professions Newsletter; v16 n5 Nov/Dec 1988

EDRS PRICE MF01 Plus Postage. PC Not Available from EDRS.
DESCRIPTORS Administrator Responsibility; *Administrators; *Collective Bargaining; College Administration; *College Faculty; *Court Litigation; Employer Employee Relationship; Higher Education; Labor Relations; Managerial Occupations; Supervision
IDENTIFIERS *National Labor Relations Board v Yeshiva Univ

ABSTRACT

Developments are traced in 11 of the most recent court cases based on the decision in National Labor Relations Board v. Yeshiva University (1980), which held that faculty at Yeshiva University were managerial employees and not entitled to bargain collectively under the protection of the National Labor Relations Act. The Yeshiva claims described here include disposition of pending litigation, disposition of newly initiated Yeshiva claims and public sector Yeshiva claims. In addition, a chart summarizing the key points and disposition of all Yeshiva-related claims is provided. (KM)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

ED304969

NEWSLETTER _ NATIONAL CENTER FOR THE STUDY OF COLLECTIVE BARGAINING IN HIGHER EDUCATION AND THE PROFESSIONS

Published at Baruch College - City University of New York - Vol. 16, No. 5 - Nov/Dec 1988

"YESHIVAWATCH" -- YEAR NINE

HE 022 272

U.S. DEPARTMENT OF EDUCATION
Office of Educational Research and Improvement
EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)

☐ This document has been reproduced as received from the person or organization originating it.
☐ Minor changes have been made to improve reproduction quality.

• Points of view or opinions stated in this document do not necessarily represent official OERI position or policy.

"PERMISSION TO REPRODUCE THIS MATERIAL IN MICROFICHE ONLY HAS BEEN GRANTED BY

NCSCBHE, Baruch College CUNY

TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)."

2 BEST COPY AVAILABLE

NEWSLETTER
NATIONAL CENTER FOR THE STUDY OF COLLECTIVE BARGAINING IN HIGHER EDUCATION AND THE PROFESSIONS
Published at Baruch College • City University of New York • Vol. 16, No. 5 • Nov/Dec 1988

"YESHIVAWATCH"– YEAR NINE

Editor's Note: This issue of the "Yeshivawatch" traces Yeshiva-related litigation and developments in 11 cases decided during the years 1986-1988. For earlier events, see "Yeshivawatch" Years One — Eight, NCSCBHEP Newsletters, Vol. 8, No. 1; Vol. 9, No. 2; Vol. 10, No. 3; Vol. 11, No. 4; Vol. 12, No. 3, Vol. 13, No. 5; Vol. 14, No. 4 and Vol. 15, No. 4.

The Center initiated its "Yeshivawatch" in 1980 shortly after the U. S. Supreme Court ruling in NLRB v. Yeshiva University 444 U.S. 672 (1980). In that decision, the court held that faculty at Yeshiva University were managerial employees and not entitled to bargain collectively under the protection of the National Labor Relations Act. While the holding was limited to the fact pattern at Yeshiva University, the court noted:

> There thus may be institutions of higher learning unlike Yeshiva where the faculty are entirely or predominantly nonmanagerial. There also may be faculty members at Yeshiva and like universities who properly could be included in a bargaining unit. It may be that a rational line could be drawn between tenured and untenured faculty members, depending upon how a faculty is structured and operates. But we express no opinion on these questions for it is clear that the unit approved by the Board (in Yeshiva) was far too broad. 444 U.S. 672 at note 31

Since the decision, approximately 60 Yeshiva claims have been adjudicated. This issue of the Newsletter traces developments in 11 of the most recent cases as well as providing a summary and disposition chart of all Yeshiva-related claims.

INTRODUCTION

Yeshiva litigation appears to be entering a new phase as few original jurisdiction cases are being initiated. The majority of claims adjudicated in the past two years have revolved around the disposition of outstanding actions. The Yeshiva claims discussed herein are classified into three categories: (1) Disposition of Pending Litigation, (2) Disposition of Newly Initiated Yeshiva Claims and (3) Public Sector Yeshiva Claims.

Yeshiva-related litigation has become somewhat predictable at private colleges where faculty seek to organize. Claims by employers are generally unit clarification requests whereby the college seeks to exclude the faculty as managerial and/or supervisory employees. In instances where the college refuses to bargain or to abide by the terms of an existing Agreement and the union is the moving party, unfair labor practice charges are initiated for refusing "to bargain in good faith".

Regional Directors, the NLRB, and the courts have continued to implement the Yeshiva standard on a routine basis. A factual analysis of institutional governance and the faculty tasks is conducted. The test appears to be whether or not the performance of the tasks constitutes managerial and/or supervisory status and, if so, do they qualify for a Yeshiva exemption?

Marymount College of Virginia and Marymount College of Virginia Faculty Association, A/W National Education Association — Case no. 5-UC-151, 280 NLRB No. 50 (1986)

The parties began their collective bargaining relationship in 1974 and negotiated a series of contracts. Several positions in the original faculty bargaining unit had been excluded in successor Agreements based on the accrual of either managerial or supervisory responsibility. A unit clarification petition was filed by the union. At issue was the bargaining status of program coordinators and professional librarians. The Regional Director clarified the unit as requested and found both classifications nonmanagerial and nonsupervisory. The employer appealed that decision claiming that both positions involved managerial and/or supervisory

TABLE OF CONTENTS

"Yeshivawatch" — Year Nine..... 1
"Yeshivawatch" Disposition List — 1980-1988... 6

functions and should be excluded from the unit under the Yeshiva doctrine.

On appeal, the NLRB rejected the employer's contention and stated:

> It is clear that the Employer has failed to meet the standard for collegial governance pursuant to which the Supreme Court found the Yeshiva faculty to be 'managerial'. Therefore, for the reasons discussed below, we do not agree with the employer's petitioner's contentions. (122 LRRM 1299)

In upholding a nonmanagerial designation, the Board noted that although coordinators play a significant role in institutional development, maintenance of courses, and contact with adjunct faculty, the time spent is either incidental or in addition to their primary duties and responsibilities. The Board further held that college program coordinators were not supervisory employees under the NLRA definition. The control they exercise is based on professional expertise and the goals and purposes of each course. Professional librarians were also deemed nonmanagerial and nonsupervisory. The findings of the Regional Director were sustained and the unit was clarified to include program coordinators and professional librarians.

American International College and the American International College Chapter of the American Association of University Professors — Case no. 1-RC-16265, 282 NLRB 16 (1986)

This case predates Yeshiva and concerns a representation petition filed by the AAUP chapter at AIC. The original bargaining unit request was heard by a regional hearing officer and subsequently transferred for decisional purposes to the NLRB. In the interim, the U. S. Supreme Court issued its opinion in Yeshiva. Since the issues raised in AIC were similar, the Board ordered additional position statements filed. The case was remanded to the Regional Director with instructions to conduct supplemental hearings on the Yeshiva question. The NLRB subsequently heard the matter, found the full-time faculty at American to be managerial and therefore dismissed the representation petition.

The Board held:

> ...we find that the faculty at American International College is managerial, as it makes effective decisions in the majority of the critical areas relied on by the Supreme Court in Yeshiva and by the Board in subsequent cases. ...the American International faculty exercises control over curriculum and academic policy through faculty participation in the various curriculum committees. Furthermore, as a faculty, it has decision-making power over proposals and recommendations of the various faculty standing committees.
>
> ...the faculty's influence extends beyond strictly academic matters. The faculty played an effective role in planning and designing new facilities and modifications to the existing physical plant.
>
> Another area where the faculty exercises effective authority is tenure. Not only was the faculty a prime developer of the present tenure system, but it is also the only body at the College that, through the Tenure Committee, is responsible for evaluating the academic qualifications of candidates eligible for tenure. Although the administration retains control over the budgetary aspects of the tenure awards, this does not detract from the faculty's exercise of authority in evaluating the academic credentials of their colleagues. (123 LRRM 1284 at 1295)

The Board cited additional areas in which the faculty exercised considerable influence. These included hiring of faculty, selection of department chairmen and the academic dean, developing a merit review system and student evaluation forms.

Activities in which the faculty did not play a significant role were also addressed. These included the selection of undergraduate students for admission, the termination of faculty and the budgetary process. In spite of the absence of significant faculty input in these areas, the Board found the faculty to be managerial employees within the context of Yeshiva. The faculty were not entitled to bargain collectively under the protection of the Act and the representation petition was accordingly dismissed.

Kendall School of Design and Kendall Faculty Association, NEA/NEA — Case no. 7-UC-226, 279 NLRB 42 (1986)

The NEA chapter first began to bargain collectively at Kendall in 1974. Subsequent to Yeshiva, the employer filed a unit clarification petition arguing that faculty members at Kendall were managerial and therefore, not entitled to bargain under the protection of the Act. The petition was denied by the Regional Director in 1982. In that decision, the Regional Director noted:

> ...the faculty as a whole and individually exercise astonishingly little power as thus exemplified by the individual faculty member's inability to make independently even those decisions basic and necessary to teaching their own classes. (122 LRRM 1177)

An appeal was then initiated by the employer. The NLRB rejected the Yeshiva defense and sustained the

order of the Regional Director. The Board stated that:

> The issues raised by the employer were litigated in a previous case in which the Board dismissed the employer's petition for unit clarification. (279 NLRB 42, 122 LRRM 1177)

Although some administrative errors were cited by the Board, none rose to the level that required a reversal of the original decision. The faculty were deemed nonmanagerial and thus entitled to bargain collectively. The parties at Kendall have not yet bargained a successor Agreement. The employer appealed the NLRB decision to the U.S. Court of Appeals, Sixth Circuit. The appeal was denied.

Livingstone College and Livingstone College Federation of Teachers and Librarians, AFT, AFL-CIO, Local 4110 — Case no. 11-RC-4957 286, NLRB 14 (1987)

The AFT local at Livingstone filed a representation petition in 1981 before the Regional Director seeking bargaining agent status. The college argued in opposition based on Yeshiva. Their argument was rejected, the petition granted and an election held. The ballots from the 1981 election were impounded by the NLRB until December 1986 when they granted the employer's request for a review of the original decision which found the faculty to be nonmanagerial. In its order, the Board reversed the findings of the Regional Director and held that faculty members were managerial employees and therefore not entitled to bargain collectively under the Act.

The litigation involved in Livingstone concerns two issues: NLRB jurisdiction over "church-operated-schools" and the managerial status of the faculty. The first issue is beyond the scope of this review and will not be addressed further. Concerning the Yeshiva, question the Board found that the faculty at Livingstone participated in those areas which had been adjudged managerial in Yeshiva. They noted:

> The faculty members at Livingstone College effectively make decisions in a majority of the critical areas relied on in Yeshiva, Boston University and American International College. Like the faculty at the above institutions, the faculty here exercise almost plenary control over curriculum and academic policy, particularly by virtue of the faculty-wide vote over proposals and recommendations made by the various standing committees. ...Neither the dean nor the president may make changes in academic policy without presenting the changes to this committee. ...the record shows that faculty members exercise substantial authority with respect to curriculum, degree requirements, course content and selection, graduation requirements, matriculation standards and scholarship recipients. In view of this authority, we find that the full-time faculty members sought by the Union are managerial employees as we find that they play major and effective roles in formulating and effectuating policies affecting primary areas identified by the Supreme Court as characteristic of managerial employees in Yeshiva. (126 LRRM 1332 at 1337)

Although there were areas in which faculty had virtually no input (budget, tenure, setting of tuition, hiring, firing, promotion and salary increases) the lack of participation in these spheres of work did not preclude a managerial finding.

Boston University Chapter, American Association of University Professors v. National Labor Relations Board and Trustees of Boston University, U.S. Court of Appeals, First Circuit, (Boston) — No. 87-1004, 127 LRRM 2193 (1987)

This decision by the U.S. Court of Appeals in dismissing an appeal by the AAUP chapter at Boston University apparently marks the end of the litigation in the matter of Boston University. After many years of NLRB proceedings and related court actions, the Board ruled that faculty at Boston University were managerial and/or supervisory employees and therefore, not entitled to bargain collectively under the protection of the National Labor Relations Act. (See 281 NLRB No. 115, 123 LRRM 1144). The union appealed the decision of the Board to the U.S. Court of Appeals, 1st Cir. which held that:

> The full circle was completed to this court with the filing by the union of the present petition seeking review of the Board's dismissal. (127 LRRM 2193 at 2194)

In a somewhat brief decision, the position of the Board was upheld. Citing Yeshiva constraints, the court stated:

> Regarding the law applicable to this case, our judicial hands are tied by Yeshiva. (127 LRRM 2193 at 2194)

In dismissing the union's appeal, the court added:

> Given the constraints of Sec. 10(f) and Yeshiva, our further consideration of this matter is an unnecessary spinning of our judicial wheels. The decision of the Board dismissing the unfair labor charges against the university is affirmed and the petition for review is denied. (127 LRRM 2193 at 2195)

This decision apparently ends the litigation in the Boston University matter.

University of Dubuque and Faculty Association of the College of Liberal Arts — Case no. 33-UC-98, 289 NLRB 34 (1988), (128 LRRM 1259)

Collective bargaining began at Dubuque in 1973 with the recognition of the NEA as the faculty bargaining agent. The parties entered into a series of collective bargaining agreements, the last of which expired in August 1984. In 1983, the employer filed a unit clarification petition seeking to remove all managerial and supervisory faculty including department chairpersons in the College of Liberal Arts from the bargaining unit. The Regional Director transferred this matter to the NLRB which had asserted jurisdiction. A series of procedural issues were raised by the union. These were subsequently dismissed by the Board and not directly related to the managerial/supervisory question. In holding that the faculty at Dubuque were managerial, the Board noted that they take part in numerous areas adjudged managerial under the Yeshiva guidelines. They stated:

> The faculty as a whole and as members of various committees participates in the formulation and effectuation of the college's academic policy. For example, the collective bargaining agreement provides that the faculty has the exclusive right to set student grading and classroom conduct standards; set degree requirements; recommend earned degree recipients; 'initially receive and consider' new degree programs; and develop, recommend and approve curricular content and course offerings. (128 LRRM 1259 at 1260)

Other areas cited by the Board which involve managerial authority include faculty participation in the selection of deans, division chairpersons, and department chairs. The faculty also take part in formulating and effectuating policy in non-academic areas. Included in this section was faculty input in major budgetary matters, capital improvement programs and financial exigency plans. The Board concluded:

> We agree with the Employer that the faculty members are managerial employees. ...We find that the faculty members here, as in Yeshiva, play a major and effective role in the formulation of academic policy. (128 LRRM 1259 at 1262)

The unit was clarified and the union decertified.

Fairleigh Dickinson University and Fairleigh Dickinson Council of American Association of University Professors Chapters — Case no. 22-RC-7198

A "Motion for Revocation" was filed by FDU seeking to terminate the AAUP bargaining unit. The parties had bargained their initial contract in 1975 and had negotiated five successor Agreements. A work stoppage ensued. One of the impasse items was the continued inclusion of faculty governance procedures in the agreement. That issue, along with the question of faculty managerial status, was submitted to the Regional Director for determination.

In reaching its decision that the faculty at FDU were managerials thus, not an appropriate unit for collective bargaining, the Regional Director acknowledged the Yeshiva standard.

> The voluminous evidence presented during the course of this hearing adequately supports a finding that the faculty at FDU effectively participates in the decision-making process relating to these areas. (at 29)

The Regional Director found that the faculty had significant input into the implementation of curriculum, course schedules, teaching load, short- and long-range planning for staffing and facilities and also made policy changes concerning course fees and tuition requirements. Citing Trustees of Boston University, the Regional Director noted that although some decisions have been made without faculty participation, they were the exception.

The Regional Director conducted a factual analysis of the governance organization of the university. The faculty role at FDU was found to be similar to that at Yeshiva and a managerial designation was set forth.

> Therefore, having found that the faculty at Fairleigh Dickinson University exercises the type of authority relating to governance, found to establish managerial status in the Supreme Court's decision in Yeshiva University, I find that the members of the faculty are not employees within the meaning of Sec. 2(3) of the Act. (at 33)

The bargaining unit certificate was revoked and the faculty union decertified.

Lewis and Clark College and Lewis and Clark Chapter, American Association of University Professors — Case no. 36-R-4988 (1988)

The Regional Director of the NLRB held that, unlike Yeshiva, the faculty at Lewis and Clark do not exercise managerial control to the extent that mandates a managerial designation and exclusion. The AAUP had attempted to organize a unit only to have their representation petition challenged by the college administration. A detailed analysis of the governance structure of the institution was conducted by the Regional Director. A finding that faculty was nonmanagerial and were eligible to have a bargaining unit election was issued. The faculty at Lewis and Clark:

> had neither the absolute control over core academic areas which they had in

> Yeshiva nor the 'almost plenary' control which they exercised in Livingstone. Moreover, while the nonsupervisory, tenured and tenure-track faculties have significant input into hiring and, in the case of the CAS faculty, into advancement, promotion, and tenure ... the holding in Loretto establishes effective recommendation in such areas, does not require a finding of managerial status. (at p. 37).

The role of the faculty in curriculum and academic policy was also examined. A comparison between the instant case and Livingstone was noted. The cases were distinguished. At Livingstone all curriculum changes had to be approved by the faculty curriculum committee, while at Lewis and Clark, these changes are made by committees in which administrators have the majority vote. This decision and order of election has been appealed by the college to the NLRB.

Dean Academy and Junior College and Dean Faculty Federation, Massachusetts Federation of Teachers, American Federation of Teachers, AFL-CIO — Case no. 1-RC-18, 952 (1988)

Dean marked the first case in which faculty at a two-year institution have been deemed managerial. The AFT sought to organize two units at the college; one full-time faculty unit, except managerial employees, and the other all regular part-time faculty. The employer challenged the composition of the full-time unit based on Yeshiva.

The Regional Director conducted an in-depth review of the college's academic governance system and academic review board. Other areas analyzed by the Regional Director included the involvement of the faculty in student admissions and recruitment, scholarship committees grading policies, hiring and firing of faculty, faculty evaluations, long-range planning and teaching responsibility.

In finding that the faculty at Dean were managerial employees, the Regional Director noted:

> ...the instant case presents even a stronger case for a finding of faculty managerial status than did Livingstone College or University of Dubuque. ...Here, even if the APC (Academic Policy Committee) on a few occasions had directed certain proposals to be returned to the department level for further study, the rank-and-file composition of the Employer's Curriculum Committee and the ultimate decision-making authority of the College Academic Meeting on Academic Matters would be indicative of faculty managerial status. (Note 70, at p. 46)

The faculty were also found to be involved in academic and non-academic matters that affect "the ultimate direction of the college". The Regional Director noted that the record:

> shows that the faculty here exercised substantial authority with respect to academic matters ...They also have significant input in non-academic areas involving planning and direction. The fact that the faculty have almost no input in such non-academic areas as admission, budget, hiring and firing, and promotions is of limited significance under Livingstone College, and 'Yeshiva, leaves little choice as to the outcome'. (at p. 49)

The part-time faculty were adjudged nonmanagerial and considered an appropriate unit. An election for that body was so ordered.

In the Matter of the Employees of University of Pittsburgh — Case no. PERA-R-84-53-W (1987)

Pittsburgh marks the first time that Yeshiva has been successfully extended to the public sector. The United Faculty of the University of Pittsburgh, affiliated with the AFT and the AAUP, had conducted an organizing drive seeking a bargaining unit of full-time faculty, regular part-time faculty in the tenure stream and research associates. The university contested this unit claiming that full-time faculty were managerial and under the Yeshiva guidelines should not be allowed to bargain. At the hearings before the Pennsylvania Labor Relations Board (PLRB), the parties entered into the following stipulation:

> ...at least since the 1950's, tenured, tenure-stream and full-time, non-tenure-stream faculty of the University of Pittsburgh have shared in the governance of the institution in a fashion comparable to those faculties found to be managerial under the principles of NLRB v. Yeshiva University and its progeny. The parties are in further agreement that the only matter to be resolved in the proceeding relating to the status of faculty is the legal issue as to whether under Pennsylvania law such sharing in the governance of the university confers managerial status upon the faculty of the University of Pittsburgh, thereby excluding their participation in collective bargaining. (at p. 3-4)

The Pennsylvania public sector labor relations law excludes management level employees from collective bargaining. The threshold issue presented to the PLRB was whether or not the Pennsylvania statute would be interpreted in a manner consistent with the Yeshiva. The PLRB hearing officer noted the similarities between the NLRA and the Pennsylvania Act and, consistent with earlier decisions in excluding managerial employees, applied the same result in this case.

"YESHIVAWATCH" DISPOSITION LIST — 1980-1988

Institution	Voluntary Resolution	Non-Managerial	Managerial	Union Decert.	Last Decision*	Agent**	Unit Size***
Adrian College, MI		X			1983	NEA	56
American Int'l College, MA			X		1986	AAUP	—
American Univ., DC (1)		X			1982	ELIFA	37
Ashland College, OH	X			X	1982	AAUP	82
Boston Univ., MA			X	X	1987	AAUP	860
Bradford College, MA		X			1982	IBT	29
Catholic Univ. Law School, DC			X	X	1980	Ind.	22
College of Osteo. Medicine, IA			X	X	1982	AFT	65
College of St. Theresa, MN	X				1981	Ind.	—
Cooper Union, NY		X			1985	AFT	55
Curry College, MA	X			X	1980	AAUP	95
Daemen College, NY	X			X	1981	AAUP	80
Dean Acad. & Jr. College, MA (2)			X		1988	AFT	—
Drury College, MO	X			X	1982	AAUP	60
Duquesne Univ. Law School, PA			X		1982	Ind.	26
Fairleigh Dickinson Univ., NJ			X	X	1987	AAUP	495
Florida Memorial College, FL		X			1982	UFF/AFT	40
Ithaca College, NY			X	X	1982	AFT	—
Kendall School of Design, MI		X			1989	NEA	50
Lewis & Clark College, OR (3)		X			1988	AAUP	75
Lewis University, IL			X	X	1985	Ind.	97
Livingstone College, NC			X		1987	AFT	77
LIU - Brooklyn Center, NY (4)	X				1984	AFT	250
LIU - C.W. Post, NY (4)	X				1980	AFT	350
LIU - College of Pharmacy, NY (4)	X				1984	AAUP	25
LIU - Southampton, NY (4)	X				1980	AFT	72
Loretto Heights College, CO		X			1984	NEA	100
Marymount College, VA (5)		X			1986	NEA	51
Milton College, WI (6)					1982	AFT	35
Montefiore Medical Center, NY	X				1982	NYSFPD	—
Mt. Allison Univ., (Canada) (7)		X			1982	CAUT	122
Mt. Vernon College, DC	X			X	1981	AAUP	25
Nasson College, ME (6)					1981	AFT	30
New York Medical College, NY		X			1982	AFT	—
Ohio Northern Univ., OH			X	X	1983	NEA	145
Parson's School of Design, NY (8)		X			1983	AFT	—
Polytechnic Institute, NY			X	X	1984	AAUP	220
Pratt Institute, NY (9)		X			1981	AFT	470
Puerto Rico Jr. College, PR		X			1982	Ind.	—
Rio Grande College, OH (10)	X				1983	Ind.	76
St. Joseph's College, ME (3)		X			1982	NEA	27
Salem College, NC			X	X	1981	NEA	64
Seattle Univ., WA (11)					1980	AAUP	—
Seton Hall University, NJ			X	X	1983	AFT	350
Simon's Rock of Bard Col., MA (12)	X				1982	AAUP	27
Southern Oregon St. Col., OR (13)		X			1985	Ind.	193
Stephens College, MO			X	X	1983	AFT	120
Stephens Institute of Art, CA		X			1980	Ind.	—
Stevens Institute Tech., NJ			X	X	1982	AAUP	109
Thiel College, PA			X	X	1982	AAUP	63
Univ. of Alaska, AK (14)					1981	NEA	—
Univ. of Albuquerque, NM			X	X	1980	AFT	—
Univ. Cent. de Bayamon, PR		X			1984	UPU	—
Univ. of Dubuque, IA			X	X	1988	Ind.	46
Univ. of New Haven, CT			X	X	1982	AFT	130
Univ. of Pittsburgh, PA (3,15)			X		1987	AAUP/AFT	1250
Villanova Univ., PA (16)	X				1980	AAUP	—
Wagner College, NY			X	X	1982	AFT	105
Wichita State Univ., KS (17)					1981	KEA	—
Wilberforce Univ., OH		X			1982	AAUP	49
Wordsworth Academy, PA (18)		X			1982	AFT	—
Yeshiva Univ., NY			X	X	1980	Ind.	200

8

FOOTNOTES

*Refers to year of most recent decision.
**Agent at initiation of claim.
***Unit size at initiation of claim.

1. English Language Institute of American University — Adjunct Faculty.
2. Managerial designation upheld for full-time faculty. Nonmanagerial designation for part-time faculty and employees of Children's Center.
3. Appeal pending.
4. Parties entered into stipulation that Yeshiva claims would not be litigated. University voluntarily recognized faculty unions as representatives of managerial employees and bargain without NLRA jurisdiction.
5. Unit clarification petition pertained to program coordinators and professional librarians only.
6. College closed.
7. Subsequent to Yeshiva, administrators of this Canadian university used the Yeshiva defense in an attempt to have faculty designated as managerial employees. New Brunswick Industrial Relations Board rejected this contention.
8. Regional Director noted: "Based on the evidence and the stipulation of the parties, I find that the full-time faculty members .... are not managerial employees within the meaning of Yeshiva." (Parsons School of Design and Parsons Faculty Federation, NYS United Teachers, AFT, AFL-CIO, NLRB Region 2, Case no. 2-RC-19369, p. 3. (1983)).
9. NLRB held Yeshiva not applicable to non-faculty administrative employees. Employer engaged in unfair labor practices within the meaning of Sects 8(a) (5) and (1), and Sects 2 (6) and (7) of the NLRA. (256 NLRB no. 175 (1981)).
10. Yeshiva claim filed. NLRB complaint issued. Voluntary resolution.
11. Pending
12. Union not certified by NLRB. AAUP voluntarily withdrew its union certification in exchange for a new nontraditional "Agreement".
13. Public sector claim. Unit clarification issue concerning placement of a department chairman. Yeshiva claim rejected by OERB. See Case no. C-176-82 (1985).
14. Public sector claim. ALRA held Yeshiva not applicable to the University of Alaska and further "...that if the faculty were to be considered managers... they would be entitled to a manager's unit or similarly designated unit". See Case no. UA-80-2 (1981).
15. Public sector claim. PLRB hearing examiner held that "the faculty of the Univ. of Pittsburgh are management level employees under Sects 301 (6) and (19) of the Act". The matter is on appeal to the Pennsylvania Board. (PLRB Case no. PERA-R-84-53-W, p. 40. (1987)).
16. The Faculty Association at Villanova U. withdrew their petition approximately two months after submitting it. No election was held.
17. Public sector claim. Kansas PERB held Yeshiva not applicable and found faculty at Wichita State University nonmanagerial. PERB ordered the designation of an appropriate bargaining unit as recommended by the hearing officer. See Case no. 75-UD-01-1980 (Kansas PERB (1981)).
18. Wordsworth Academy is a private school "engaged in providing special educational services" to children who suffer from learning disabilities.

The union's argument that in other public sector jurisdictions where Yeshiva has been raised, noteably Kansas, Alaska and Oregon, the doctrine was found not controlling and was rejected. In distinguishing Pittsburgh, the hearing officer noted:

> while instructive, these jurisdictions do not have public employe legislation similar to the (Pennsylvania) Public Employe Relations Act upon which an appropriate parallel may be drawn. More specifically, they neither have a provision comparable to Sec. 301(16) defining a management level employe nor a history of reliance on federal precedent in determining a management employe. (at pp. 36 and 37)

The hearing officer noted the recent collective bargaining enabling legislation passed in Ohio and Illinois which expressly designated higher education faculty as covered employees but stated:

> It is inappropriate to suggest that the Board should rely upon legislative determinations from other states when the PERA represents the law of this commonwealth. If the Pennsylvania Legislature had wanted to include the faculty of the University of Pittsburgh as covered employees, they would have expressly referred to them in PERA and expressly denied the managerial status. (at p. 37)

A unit of non-tenure-stream, part-time faculty, along with full-time and regular part-time librarians was deemed appropriate. An election was held, the results of which have been challenged. The union has appealed the finding with respect to the proposed full-time faculty unit to the PLRB; however, due to a vacancy on the Pennsylvania Board, no decision has yet been rendered.

Southern Oregon State College v. Association of Professors of Southern Oregon State College, Oregon Employment Relations Board — Case no. C-176-82 (1985)

The Yeshiva question was raised in conjunction with a unit clarification proceedings at Southern Oregon. The placement of department chairpersons into a faculty unit was challenged by the college. They argued that if chairmen were not removed from the regular faculty unit based on a supervisory exclusion then, in the alternative, Yeshiva should control and all faculty members should be excluded from collective bargaining. The unit clarification petition was denied as department chairs and area coordinators, with one exception, were found nonsupervisory. The exception was excluded from the unit consistent with the "community of interest" test and not the supervisory question.

The Oregon Board rejected Yeshiva stating:

> It is apparent that the legislature anticipated that this Board would designate appropriate bargaining units composed of college faculty members. Therefore, college faculty members are covered by the Public Employees Collective Bargaining Act (PECBA) and will not be excluded as 'managerial employees'. (at p. 16)

The reference to Yeshiva in this case attempt to apply the doctrine to the public sector.

SUMMARY

Yeshiva is a major concern to those involved in labor relations and labor law. Its impact has spread beyond private sector colleges and universities and is viewed by some observers as a threat to increased employee participation in the workplace. Professor Charles Heckscher, of Harvard University and a noted observer of labor/management relationships, notes in The New Unionism:

> In recent years, many unions have been pressured by their members and by employers to explore participatory programs that encourage workers to take responsibility for decision making. The Yeshiva decision, however, discourages this trend. The more workers gain a direct voice in determining their working conditions, the more likely they are to be considered managerial employees. Thus the decision reinforces the suspicions of union officials and tends to steer them back to traditional tactics. (p. 79)

Yeshiva remains an impediment to participatory management. This problem, however, might work to the advantage of faculty unionists who thus far have been unable to make inroads into the erosion of the doctrine. The concern by industrial and craft unions over employee involvement in workplace collaborative decision making might forge new alliances between them and representatives of the AAUP, AFT and NEA. While the three national higher education unions have been unable to obtain legislation to modify the Yeshiva doctrine, a concerted effort and coalition with organized labor might prove more successful.

Two additional Yeshiva matters should be noted. First, there are no "lead cases" in the judicial pipeline which would allow the courts an opportunity to reexamine the fundamental premise in Yeshiva. At this writing, any judicial change in the doctrine appears remote. Second, the potential spread of Yeshiva into the public sector seems possible. Although public sector jurisdictions do not bargain pursuant to the NLRA, the legislation in many states is similar to the private sector model. Pittsburgh is indicative of this problem.

Although no other profession has been impacted as greatly by the Yeshiva doctrine as higher education, the potential for spillover into other unionized employment relationships remains.

NATIONAL CENTER NEWSLETTER

A publication of the National Center issued five times during the year. Annual subscription rate: $25; single copy, $5.00; free to Center members. Back issues available. ISSN 0737-9285

Editor and Director of the Center: Joel M. Douglas
Executive Assistant to the Director: Beth Johnson
Administrative Assistant: Ruby N. Hill
Research Assistants: Beth Genya Cohen
Jasmine Tata

Address all inquiries and contributions to the National Center for the Study of Collective Bargaining in Higher Education and the Professions, Baruch College, 17 Lexington Avenue, Box 322, New York, N.Y. 10010. Telephone: (212) 725-3390.